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on Restrictive Business Practices

# RESTRICTIVE BUSINESS PRACTICES INFORMATION

Issue No.16

This information note is part of a series issued by the UNCTAD secretariat, in response to a request to the Secretary-General of UNCTAD by the Intergovernmental Group of Experts on Restrictive Business Practices at its first and second sessions, with a view to keeping Governments and other interested bodies or persons informed of recent major developments in the area of restrictive business practices.

## I. LEGISLATIVE AND POLICY DEVELOPMENTS IN THE FIELD OF RESTRICTIVE BUSINESS PRACTICES

### *Competition legislation adopted in Gabon*

1. Law No. 05/89 on Competition[1], passed on 6 July 1989 in Gabon, prohibits all concerted actions, conventions, agreements, written or otherwise, which tend to limit access to markets or restrain the free play of competition by enterprises, to allocate markets or sources of supply, interfere with the market mechanism by artificially increasing or lowering prices, to restrain or control output, markets, investments and technical progress. The law also prohibits enterprises, alone or otherwise, from abusing their dominant position of power on the domestic market or over a substantial part of it; or to exploit abusively supplier or purchasing enterprises in captive markets which do not have countervailing power. The law also requires transparency on pricing; it prohibits all forms of misleading advertising as well as resale price maintenance, refusal to deal and selling below cost, except in certain cases such as for perishable goods and sales in case of liquidation. The law will be enforced by the Director General of Prices and Economic Enquiries and price control officials who, under the authority of the Minister of the Economy, will have powers to request information from enterprises, seek information and enter premises when necessary for the proceedings of enquiries. The officials responsible for the enquiries have the right to impose

[1] *Loi No.5/89 relative à la concurrence, du 6 juillet 1989.*

fines and to seize goods used to breach the law.

2. In addition, the law creates a Competition Commission composed of 17 members under the authority of the Minister of the Economy. The Commission is to be consulted on the preparation of laws or regulations relating to competition; it must give advice on application for granting a monopoly or on any issue regarding competition. Advice may be sought from the Commission by the Government, local groupings *(collectivités locales)* and professional organizations, interested groups or trade unions. Enterprises can also seek advice from the Commission.

### *Merger control regulation adopted in the European Community*

3. On 21 December 1989, the European Community "Internal Market" Council of Ministers. adopted a new regulation on the control of mergers.[2] The entry into force of the regulation is set for September 1990, but a transitional period of four years started on the day the regulation was adopted. The regulation gives the Commission power to review and evaluate whether merger operations of Community dimension are compatible with the Common Market. Mergers will be considered compatible as long as they do not create or strengthen a position such that competition on the Common Market or a substantial part of it is hindered significantly. Under the merger control regulation, enterprises must ***give prior notification*** of mergers of Community dimension no more than a week after having signed a protocol agreement (or having taken the decision to undergo a merger by some other means). At the end of three weeks of the notification being analysed, if the operation does not give rise to any doubt about its compatibility with the Common Market, the Commission will formally declare it compatible. Conversely, if the Commission decides that there is some doubt about the merger's compatibility with the common market, it will decide to begin a procedure which should be complete within three months. From the time of notification, the procedure may take a maximum of four months. Following the Commission's decision on the merger, national competition agencies will have three weeks to submit a case for re-examination if the special circumstances of a "distinct" market apply. However, the right to grant a second look is to remain firmly in the hands of the Commission. Mergers cannot be carried out without notification or during the three-week period following notification.

4. The national authorities will be considered competent to authorise operations that are not of Community dimension. A merger is considered to be of Community dimension when: (a) the total turnover on a world scale for the enterprises concerned is over 5 billion ECUs (approximately $US 5.8 billion), and (b) the turnover attained individually within the Community by at least two of the enterprises concerned is over 250 million ECUs, unless each of the enterprises concerned achieves more than two-thirds of its total turnover in the Community within a single member State. The thresholds are to be revised before the end of the fourth year following the adoption of the current regulation by the Council voting by qualified majority upon the proposal of the Commission. It is expected that the number of merger operations entering into the field of application of the merger control regulation will vary from 40 to 50 per year.

### *Competition legislation in preparation in Senegal*

5. A draft bill on "Prices, competition and economic disputes"[3], which would amend and replace Law No.65-25 of 4 March 1965, on "Prices and infringements to economic legislation", is in preparation in Senegal. While part one of the draft *(titre I)* concerns the control of prices and prohibition of misleading claims and advertising, and obliges sellers to present a bill for each

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2 Council Regulation (EEC) No.4064/89 of 21 December 1989, on the control of concentrations between undertakings; in *Official Journal of the European Communities*, No.L.395 of 30 December 1989.

3 *Projet de loi sur les prix, la concurrence et le contentieux économique abrogeant et remplaçant la loi No.65-25 du 4 mars 1965 sur les prix et les infractions à la législation économique*. Information transmitted by the Government of Senegal.

transaction, part two *(titre II)* is devoted to the control of anti-competitive practices. It deals with collusive practices, such as concerted actions, agreements and undertakings having the effect of hampering, restraining or distorting competition, and abuses of dominant positions of market power by one or more enterprises resulting in the same effect over the domestic market or a substantive part of it. The bill could also prohibit abusive concentrations of market power. Any act or agreement which would infringe the prohibitions on collusive practices would be automatically nul and void.

6. The draft also deals with practices by a single enterprise *(titre II)* such as refusals to deal, discriminatory pricing and sales conditions, resale price maintenance and predatory selling, which would be prohibited. Infringements would be sanctioned by fines as well as by imprisonment. Goods could also be seized. Under the proposed law, a Competition Commission would be created, the modalities of which are to be fixed by degree.

## II. DEVELOPMENTS IN THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

### A. Restrictive business practices in international trade

***Heavy fines imposed by the EEC against a cartel of major producers of welded steel mesh***

7. In its decision of 2 August 1989[4] the Commission of the European Communities imposed heavy fines (a total of ECU 9.501 million) against major welded steel mesh producers for forming a collusive arrangement amounting to a cartel for the supply of welded steel standard mesh, catalogue mesh and tailor-made mesh. The undertakings involved, together with their respective countries of origin and the fines imposed are listed in the table below:

| Name of undertakings | Country of origin | Fines imposed in ECUs |
|---|---|---|
| Tréfilunion SA (TU) | France | 1 375 000 |
| Société Metallurgique de Normandie(SMN) | France | 50 000 |
| Société des Treillis et Panneaux Soudés (STPS) | France | 150 000 |
| Sotralentz SA | France | 228 000 |
| Tréfilarbed Luxembourg Saarbrücken Sarl. | Luxembourg | 1 143 000 |
| Steelinter SA | Belgium | 315 000 |
| NV Usines Gustave Boël, Afdeling Trébos | Belgium | 550 000 |
| Thibo Bouwstaal BV | Netherlands | 420 000 |
| Van Merksteign Staalbouw BV | Netherlands | 375 000 |
| ZND Bouwstaal BV | Netherlands | 42 000 |
| Baustahlgewebe GmbH (BStG) | Germany, Federal Republic of | 4 500 000 |
| ILRO SpA | Italy | 13 000 |
| Ferriere Nord SpA (Pittini) | Italy | 320 000 |
| G.B Martinelli fur G.B. Metallurgica | Italy | 20 000 |
| Total | | 9 501 000 |

[4] *Official Journal of the European Communities*, No. L 260, Vol.32, 6 September 1989; Commission Decision IV/31.553 - Welded steel mesh.

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8. During the Commission's investigation (carried out between 1980 and 1985), documentary evidence of the so-called "gentlemen's agreement" (which came into effect on 1 December 1981) as well as the "protocole d'accord" (which came into effect on 4 October 1983) among others, clearly showed that the producers supplying welded steel mesh products in the Community had participated on one or more occasions in one or more agreements and/or concerted practices consisting of the fixing of selling prices, the restricting of sales, the sharing of markets, and in measures to implement these agreements and to monitor their operation. Moreover, the comprehensive nature of collusive agreements covering virtually all trade throughout the EEC were viewed by the Commission as a substantial restriction and distortion of competition between the parties, having an appreciable effect upon trade between member States as it directly restrained cross-border trade in goods.

9. The deliberate infringement of Article 85(1) of the EEC Treaty was considered to be particularly serious. While the individual infringements were of varying duration and intensity, they amounted to a sustained effort to frustrate in various ways one of the main aims of the Treaty, namely the creation of a common market. In fixing the general order of fines, the Commission took into consideration, among other things, the serious restrictions of competition caused by the undertakings' interference in the price mechanism, in import penetration of one another's domestic markets, in quantity and market-sharing; the economic importance of the industry in which the producers accounted for virtually the absolute majority of the existing market as well as the economic impact of the infringements as to whether they directly or indirectly influence prices in the six Member States concerned; the institutionalization of the collusion in a system of regular cartel meetings, held under conditions of great secrecy in which producers set out to organize in detail the welded steel mesh market, and the length of time they had participated in the infringement (throughout the period 1981 to 1985). The Commission also took into account the fact that in the Federal Republic of Germany, the Federal Cartel Office had authorized the formation of a structural crisis cartel by domestic welded-mesh producers whereas the French authorities (Decision of 4 September 1985) had imposed fines on some undertakings involved for violations of French domestic competition law. In addition to imposing heavy fines, the Commission instructed the parties concerned to bring the said infringement to an end and to refrain from any agreement or concerted practice which may have the same or a similar objective or effect.

### *Enforcement of anti-monopoly law in Japan*

10. Eight construction firms, members of the "Offshore Reclamation Construction Association" in Japan, were found by the Japanese Fair Trade Commission (FTC), to have operated an illegal cartel fixing the prices for sand and earth used in constructing a new international airport at Osaka. The FTC was reported in September 1989[5] to have fined the construction firms 320 million yen (about $US 2 million) for fixing prices and for excluding other potential bidders. The FTC also issued a warning to a joint venture of 20 firms that ordered the association to deliver sand and earth for shore protection work at another airport construction site, the New Kansai International Airport project, which had been accused of colluding. As a result of the first case, the prefectural Government of Osaka was reported to have banned the eight construction firms from its public works projects.

11. In October 1989, officials of the FTC searched the offices of Apple Computer Japan, a subsidiary of the United States computer manufacturer Apple, and those of Canon Sales, Apple's primary Japanese distributor,[6] for evidence of the firms' attempts to prevent "parallel imports" of Apple computer products by refusing to service or repair such products and by exerting pressure on publications to refuse advertisements by "parallel importers". "Parallel imports", also called "grey market goods", are those distributed outside the official distribution network of the firm, usually at a discount. Grey market prices for Apple products sold in Japan were alleged to range between 10 and 50 per cent below the prices imposed by the official distributors. Apple was reported to attempt to stamp out parallel imports of its products in Japan and elsewhere in the world

5 *Antitrust & Trade Regulation Report* Vol.57, No.1432, 14 September 1989, p.347.

6 See, in particular, *Financial Times*, 6 October 1989 and *ATRR*, Vol.57, No.1435 of 5 October 1989.

by tracing the US source of the products, and then rescinding the US dealer's contract, on proof of having sold the products for export. If the FTC finds that the firms have violated Japanese Anti-monopoly Law, they will be required to cease and desist from such practices. A second violation could result in the firms facing a maximum fine of 3 million yen (about $US 20,000). Company officials found guilty face a maximum of two years imprisonment.

12. This action of the FTC took place at a time when Japan was under great pressure from the United States and the EEC to make efforts to open its markets to imports, a market claimed difficult to penetrate because of alleged restrictive practices clogging up the distribution system. Cases in point were provided when Futjitsu, a leading Japanese computer company, admitted winning more than one systems design contract in the public sector with bids of only 1 yen (approx. 0.7 US cents). Subsequent investigations revealed that NEC, an other technology company, had won a contract in another public sector with a 1 yen bid; five other similar cases in the past two years were discovered. Each of the contracts was worth many millions of yen, with the Hiroshima Government estimating the cost of its system design at 11 million yen. The FTC[7] concluded on 24 November that the 1 yen bids did not violate the Anti-monopoly Law. However, it condemned the bids for lack of "business ethics", and warned the two companies and other computer makers to "refrain from these practices of excessive competition", otherwise they could face prosecution for dumping or other violations of the law.

13. Meanwhile, the United States Department of Justice, demanded on 14 November 1989 that a group of 140 Japanese construction firms pay 5 billion yen ($US 34.8 million) as an out-of-court settlement in a dispute over the alleged "dango accords" (collusive tendering agreements) on construction projects at a United States military base (Yokosuka) near Tokyo. The group of construction contractors had undertaken 278 projects, including the construction of housing for military personnel at the base, between April 1984 and September 1987, valued at $US 134.2 million. The alleged collusive tendering involving the 140 companies surfaced in December 1988, when the JFTC fined 70 firms of the group a total of 290 million yen (about $US 2.1 million) for collusive tendering and price-fixing charges. The case was finally settled with the group of 140 construction companies agreeing on 17 November 1989 to pay $US 34.8 million in compensation for the United States "dango" agreement charges.

### *Canada's first case of abuse of dominant position before tribunal*

14. On 1 June 1989, the Director of Investigation and Research[8] filed a notice of application with the Competition Tribunal, requesting orders against the NutraSweet Company - a principal supplier of aspartame (a sweetener used as a substitute for sugar in food products) in Canada - under the "abuse of dominant position, exclusive dealing and tied selling" provisions of the Competition Act, which came into force in 1986.

15. The anti-competitive acts alleged by the Director's application included: (i) the foreclosing of the aspartame market in Canada due to the existence of worldwide contracts which required exclusive use of NutraSweet's aspartame, or alternatively provided no incentive to seek other sources of supply as a result of practices such as price preferences, among others noted; (ii) the presence of exclusive worldwide supply contracts, exclusive supply provisions in individual contracts, and the affixing of the NutraSweet trademark on customers' product labels, as well as exclusive dealing inducements through the presence of the so-called "meet or release" clauses, "most favoured nation" clauses, trademark display allowance provisions, co-operative marketing rebate schemes, fidelity rebates and free product clauses in NutraSweet's arrangements with its customers; (iii) the adoption of such practices as requiring customers to affix only the NutraSweet trademark to customers' products as conditions for the supply of NutraSweet's aspartame.

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7 *ATRR*, Vol.57, No.1441, 16 November 1989, p.699; No.1443, 30 November 1989, p.767, and *Financial Times*, 16, 21, 24 and 27 November 1989.

8 *Canadian Competition Policy Record*, Vol.10, No.2, June 1989, pp.4-8.

16. The orders requested by the Director involved the prohibition of worldwide contracts with multi-national customers governing the supply of aspartame to Canadian affiliates, and prohibition from requiring customers to purchase their entire supply of aspartame from NutraSweet, selling aspartame to Canadian customers at below acquisition cost and from granting customer-price concessions and other allowance not available to competitors. The Director had applied as well for a declaration that the contractual provisions alleged to have foreclosed competition were of no force or effect, and judicially enforceable by NutraSweet. The Director had also requested the Competition Tribunal to order NutraSweet to include a most-favoured-nation clause in all supply contracts of customers which compete with each other in selling products containing aspartame if a most-favoured-nation clause was included in a contract of any one of them. Finally, the Director had sought a declaration that any contracts entered into by NutraSweet or its affiliates pursuant to worldwide contracts were of no force or effect insofar as they affected the supply of aspartame in Canada and that NutraSweet may not require minimum exclusive annual volume commitment in any supply contract which is greater than 50 per cent of a customer's total annual volume requirements of aspartame. The case is still pending.

## B. Domestic restrictive business practices

### *Restrictive business practices in Canada*

17. In Canada, 23 out of 43 proceedings[9] considered by the courts were concluded during the year ended 31 March 1989, under the "offences against competition" provisions of the Competition Act, of which 15 resulted in convictions, seven resulted in the acquittal of the accused and one resulted in the issuance of an order of prohibition without conviction. The total fines imposed reached $CAN 3,029,000. These cases involved resale price maintenance, price-fixing and market allocation agreements among suppliers of goods and services, including bid-rigging; they covered a wide range of sectors such as real estate, brokerage services, building supplies, school buses, computers, soft drinks, dairy equipment and microwave ovens. In addition, 125 out of 232 misleading advertising and deceptive marketing practices cases were concluded during the year, of which 77 resulted in convictions. The fines imposed totalled $CAN 812,980. These cases also covered a variety of sectors, including insurance, school supplies, jewellery, automobiles, photographic supplies, clothing and toys.

### *Decisions of the Office of Free Competition of Finland*

18. From 1 October 1988 to 25 August 1989, the newly appointed Office of Free Competition (OFC)[10] , whose main functions are investigations and negotiations of issues related to competition, had made 182 decisions that covered mostly registrations of regional dominant market positions. Several of these cases involved decisions to cancel horizontal cartel agreements; however, none of the cases treated had previously been referred to the Competition Council.

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9 *Annual Report of the Director of Investigation and Research, Competition Act*, for the year ended 31 March 1989, pp.7-18, pp.27-29 and pp.69-77.

10 Information transmitted by the Government of Finland, 22 December 1989.

### *Restrictive trade practices in the United Kingdom*

19. In the United Kingdom[11], the number of agreements submitted for registration continued to rise sharply during 1988. As a matter of fact, 973 restrictive trading agreements were added to the register of the Office of Fair Trading, of which 512 cases were related to goods and 461 to services. In 97 cases, notices were issued under section 36 of the 1976 and 1977 Restrictive Trade Practices Acts (RTP Acts). The Restrictive Practices Court sat in March and December 1988 to consider seven agreements and groups of agreements referred to it by the Director General of Fair Trading. These agreements were found to be involved in practices such as price-fixing and collusive tendering, and covered various sectors of the economy such as: manufacture of polyester resin; suppliers of ready-mixed concrete; manufacturers of iron and steel rolls, and offshore supply-vessel operators, among others. All of these agreements were found to be against the public interest, to the detriment of individual, industrial and public authority customers, and were bound by court orders made under section 2 and/or section 35 of the 1976 and 1977 RTP Acts, in which the undertakings should restrain from giving effect to the restrictions in the agreements and from operating other registrable agreements without first submitting details to the Office of Fair Trading.

### *Record fines imposed on 71 French building and construction companies*

20. On 8 November 1989, the Competition Council of France *(Conseil de la Concurrence)* imposed record fines of FF 166 million ($US 26.8 million) on 71 leading road building and construction companies for collusive tendering and illicitly conspiring to fix prices for public contracts between 1984 and 1986.[12] In addition, a number of the companies were instructed to remove restrictive clauses from contracts for 11 joint bitumen-making ventures. The clauses banned the parties from setting up competitive bitumen arrangements of any kind or from obtaining supplies from other sources whatever the price. Of the total 71 companies, the biggest fines were imposed on eight companies of the Bouygues Group, the world's largest construction conglomerate, which were ordered to pay FF 56 million ($US 9 million), seconded by Jean Lefebvre, FF 30 million ($US 4.8 million), and Viafrance, FF 11 million ($US 1.76 million). The fines constituted the biggest penalty ever levied by the Council and was far higher than the FF 15 million ($US 2.4 million) imposed in 1988 on a number of building engineering surveyors.

### *Soft drink bottlers face charges of price-fixing in the United States*

21. On 10 October 1989, the United States District Court for the Eastern District of Virginia[13] filed a one-count felony information, charging Pepsi-Cola Bottling Company of Petersburg, Inc., (Pepsi-Cola of Petersburg) with price-fixing for the sale of Pepsi-Cola and Coca-Cola soft drinks (including both cola and non-cola flavours) in the Virginia area. The charges alleged that Pepsi-Cola of Petersburg conspired with Mid-Atlantic Coca-Cola Bottling Company Inc., in violation of Section 1 of the Sherman Act, to fix certain soft drinks prices of Pepsi and Coca-Cola brands as well as to reduce or eliminate price discounts and free cases of soft drinks given to customers, during the period starting in June 1982 and through November 1984. Pepsi-Cola Bottling Co. of Petersburg, Inc., agreed to enter a guilty plea on the alleged charges and pay a fine of $US 1 million.

22. In a similar case, the United States District Court for the Eastern District of Washington

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11 *Annual Report of the Director General of Fair Trading, 1988*, Her Majesty's Stationery Office (HMSO) publication, United Kingdom, pp.37-38; and *Annual Report on Developments in the United Kingdom*, January 1988 - June 1989, pp.7.

12 *Le Monde*, 9 November 1989 and *Le FIG-ECO*, 9 November 1989.

13 United States Department of Justice, *Press Release*, 16 October 1989. Crim.No. 89-00062-R (E. D. Va.) of 10/10/1989; Crim.No.89-392 (E. D. Wash.) of 12/10/89; and *ATTR*, Vol.57, p.505 and 536.

filed on 12 October 1989 a two-count felony information, charging Blue Mountain Bottling Company of Walla Walla (BMB), d/b/a 7-UP Bottling Company of Tri-Cities - and Richard Roland Pelo with price-fixing for the sale of soft drink products. Count one charged that BMB conspired with others during the period starting in January 1985 and continuing through September 1985 to fix the prices of bottled and canned soft drink products distributed in Walla Walla and Colombia counties. Count two charged that both BMB and Pelo with similar conspiracy conducts in Franklin and Benton counties during the same period mentioned above. BMB, Pelo and their co-conspirators allegedly violated Section 1 of the Sherman Act by participating in meetings and telephone conversations to establish minimum net prices for soft drink products and to eliminate discounts below the minimum net prices, and monitoring and enforcing the pricing agreements.

23. In a separate case, a one-count felony information was filed in the United States District Court in Yakima - Washington[14] on 4 October 1989, charging Coca-Cola Bottling Company - Yakima & Tri-Cities with participating in conspiracy with others to fix, monitor and enforce the minimum net pricing agreements for the sale of soft drink products in the Tri-Cities area and the State of Washington, in violation of Section 1 of the Sherman Act. The time frame of the alleged infringement started from January 1985, continuing until September 1985.

## C. Acquisition of market power through mergers, takeovers and joint ventures

### *EEC - Sharp increase in mergers, acquisitions and joint ventures during 1987/1988*

24. The European Economic Community[15] reported a sharp increase of 45 per cent during the period 1987/1988, as compared with 27 per cent in 1986/1987, in mergers, acquisitions and joint venture operations involving Community-scale firms. (Mergers: +34 per cent; minority acquisitions: +76 per cent, and joint ventures +36 per cent.) In industry, the number of mergers rose by 26 per cent (383 cases), following a rise in international operations (+241 per cent) and Community operations (+48 per cent). Most operations occurred in the chemical sector (+20 per cent), followed by the food and drink industry (51 cases). Geographically, France ranked first in the number of merger operations with 122 cases, followed by the United Kingdom with 106, the Federal Republic of Germany with 52 and Italy with 49. Acquisition of minority holdings progressed by 54 per cent (national operations +37 per cent, Community +76 per cent and international +142 per cent), primarily in the food and drink industry, which accounted for 35 cases (+67 per cent). Joint ventures were up by 23 per cent in 1987/1988, more than double the rate of the previous period.

25. In the services sector, mergers and takeovers increased by 56 per cent, mainly in the banking sector, with 78 operations realizing a growth rate of +123 per cent, followed by distribution with 57 cases and a growth rate of +16 per cent and insurance with 40 cases accounting for +43 per cent increase in growth rate. The number of acquisitions of minority holdings grew by 144 per cent, notably due to the rise in international (+174 per cent) and national (+156 per cent) operations. Joint ventures were up by 71 per cent as compared to 48 per cent in 1986/1987.

26. According to the Commission, on the eve of the single market, reinforcement of market position has been the most important motive for mergers and acquisitions (amounting to 25 per cent of all reasons cited). This was followed by expansion and complementarity (both amounting to 20 per cent), restructuring (15 per cent), and, finally, research and development (which has been the primary motive for joint ventures).

27. In conclusion, the Commission noted in its report that the anticipated important economic

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14 United States Department of Justice, *Press Release*, 10 October 1989. Crim.No.CR-89-372-01 (E. D. Wash.) of 4/10/1989.

15 Commission of the European Communities, *Eighteenth Report on Competition Policy, 1989*, part 4, pp.234-245.

benefits from the single European market would be severely restricted if merger activity during the adjustment period increased monopoly power. Therefore, through the use of the merger control regulation, which comes into effect in September 1990, the Commission intended to prevent possible irreversible structural changes which may be potentially damaging to competition.

### *Merger activities in the United Kingdom*

28. In the United Kingdom,[16] the level of merger activity remained high during 1988. In fact, the total number of industrial and commercial mergers (excluding mergers in the financial sector) was 9 per cent higher than in 1987. The Office of Fair Trading had considered a total of 456 mergers and merger proposals. Of these, 150 were either abandoned at an early stage or found not to qualify under the Fair Trading Act of 1973, and 267 mergers were required to be considered for reference to the Monopolies and Mergers Commission, of which 11 were referred. In addition, the Office was approached for confidential guidance on 39 merger proposals: 29 cases received favourable and six unfavourable guidance. No guidance could be given in the remaining cases. Approximately 25 per cent of bid proposals were made by foreign bidders; they covered such sectors as mechanical engineering; food, drink and tobacco; paper, printing and publishing; chemicals and man-made fibres; vehicles; and coal, oil and natural gas. With one exception, all these references were made primarily because of concern about the possible impact of the merger on competition. The exception was the Government of Kuwait's 21.6 per cent acquisition of shares in British Petroleum Company Plc (BP), which was referred because of the implications of BP coming under the control of a Government which was a member of OPEC.

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16 *Annual Report of the Director General of Fair Trading, 1988* Her Majesty's Stationery Office (HMSO) Publications, United Kingdom, pp.13, 35-37, 82-86.

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